

IN THE CHANCERY COURT FOR WILLIAMSON COUNTY, TENNESSEE
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

STATE OF TENNESSEE,

Plaintiff,

v.

No . _____

TELEFLORIST, INC., a Pennsylvania corporation, dba
Alcoa Florist Delivery.com, Brentwood Florist of
Brentwood.com, Brentwood Flowers of Brentwood.com,
Bristol Florist, Clarksville Florist and Gifts
DeliveryDotCom, Clarksville Florist Delivery.com,
Clarksville Florist in Clarksville, Cleveland Florist of
Cleveland.com, Cleveland Flowers of Cleveland.com,
Clifton Florist and Gifts and Delivery.com, College Dale
Florist and Gift Delivery, Collierville Flowers and Gifts
Com, Columbia Florist Delivery.com, Columbia Florist
in Columbia.com, Columbia Florist of Columbia.com,
Columbia Flowers of Columbia.com, Dayton Florist &
Gifts Delivery.com, Dickson Florist and Gift Delivery
Dot Com, Dyersburg Florist and Gifts Delivery.com,
Fayetteville Florist and Gifts Delivery.com, Florist
Network, Franklin Florist Delivery.com, Franklin Florist
in Franklin.com, Germantown Florist Delivery.com,
Germantown Florist in Germantown.com, Germantown
Florist of Germantown.com, Germantown Flowers of
Germantown.com, Jackson Florist & Gifts Delivery Com,
Jefferson City Florist & Gifts Delivery Dot Com,
Knoxville Florist Delivery.com, Knoxville Florist in
Knoxville.com, Lenior City Florist & Gifts Delivery.com,
Lewisburg Florist & Gifts Delivery.com, Lexington Florist
& Gifts Delivery.com, Maryville Florist & Gifts
Delivery.com, Memphis Florist & Gifts Delivery.com,
Milan Florist & Gifts Delivery.com, Morristown Florist &
Gifts Delivery, Murfreesboro Florist Delivery.com,
Murfreesboro Florist in Murfreesboro.com, Murfreesboro
Florist of Murfreesboro.com, Murfreesboro Flowers of
Murfreesboro.com, Nashville Florist and Gifts
Delivery.com, Nashville Florist Delivery.com, Nashville
Florist in Nashville.com, Oak Ridge Florist and Gift
Delivery Dot Com, Paris Florist, Pulaski Florist & Gifts
Delivery.com, Ripley Florist & Gifts Delivery.com, Sandy
Springs Florist Delivery, Savannah Florist & Gifts

Delivery.com, Sevierville Florist & Gifts.com, Shelbyville)
Florist & Gifts.com, Smyrna Florist and Delivery,)
Springfield Florist and Gifts Delivery.com, Springhill)
Florist & Gifts Delivery.com, Union City Florists and)
Gifts Delivery, and Whitehouse Florist & Gifts Delivery,)
)
Defendant.)

STATE OF TENNESSEE'S COMPLAINT

This civil law enforcement proceeding is brought in the name of the State of Tennessee, by and through Paul G. Summers, Attorney General (“Attorney General”), pursuant to the Tennessee Consumer Protection Act of 1977 (Tenn. Code Ann. §§ 47-18-101 *et seq*)(“TCPA”), the Attorney General’s general statutory authority (Tenn. Code Ann. § 8-6-109), and the Attorney General’s authority at common law, and at the request of Mary Clement, the Director of the Division of Consumer Affairs of the Department of Commerce and Insurance (“Director”).

The Attorney General and the Director have reason to believe that the above-named Defendant has violated the TCPA by engaging in unfair and deceptive acts and practices in connection with the marketing and sale of flowers.

THE PARTIES

1. Plaintiff, State of Tennessee, *ex rel.* Paul G. Summers, Attorney General, is charged with enforcing the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. §§ 47-18-101 *et seq.*, (hereinafter “the TCPA”), which prohibits unfair or deceptive acts or practices affecting the conduct of any trade or commerce. Per Tenn. Code Ann. § 47-18-108(a)(1), the Attorney General may initiate civil law enforcement proceedings in the name of the State to enjoin violations of the TCPA and to secure such equitable and other relief as may be

appropriate in each case.

2. Defendant Teleflorist, Inc. (“Teleflorist”) is incorporated in the state of Pennsylvania and is located at 654 2nd Street Pike, Southampton, Pennsylvania 18966. Teleflorist has done business in the State of Tennessee under the following aliaes, dbas or trade names: Alcoa Florist Delivery.com, Brentwood Florist of Brentwood.com, Brentwood Flowers of Brentwood.com, Bristol Florist, Clarksville Florist and Gifts DeliveryDotCom, Clarksville Florist Delivery.com, Clarksville Florist in Clarksville, Cleveland Florist of Cleveland.com, Cleveland Flowers of Cleveland.com, Clifton Florist and Gifts and Delivery.com, College Dale Florist and Gift Delivery, Collierville Flowers and Gifts Com, Columbia Florist Delivery.com, Columbia Florist in Columbia.com, Columbia Florist of Columbia.com, Columbia Flowers of Columbia.com, Dayton Florist & Gifts Delivery.com, Dickson Florist and Gift Delivery Dot Com, Dyersburg Florist and Gifts Delivery.com, Fayetteville Florist and Gifts Delivery.com, Florist Network, Franklin Florist Delivery.com, Franklin Florist in Franklin.com, Germantown Florist Delivery.com, Germantown Florist in Germantown.com, Germantown Florist of Germantown.com, Germantown Flowers of Germantown.com, Jackson Florist & Gifts Delivery Com, Jefferson City Florist & Gifts Delivery Dot Com, Knoxville Florist Delivery.com, Knoxville Florist in Knoxville.com, Lenior City Florist & Gifts Delivery.com, Lewisburg Florist & Gifts Delivery.com, Lexington Florist & Gifts Delivery.com, Maryville Florist & Gifts Delivery.com, Memphis Florist & Gifts Delivery.com, Milan Florist & Gifts Delivery.com, Morristown Florist & Gifts Delivery, Murfreesboro Florist Delivery.com, Murfreesboro Florist in Murfreesboro.com, Murfreesboro Florist of Murfreesboro.com, Murfreesboro Flowers of Murfreesboro.com, Nashville Florist and Gifts Delivery.com, Nashville Florist Delivery.com, Nashville Florist in Nashville.com, Oak Ridge Florist and Gift Delivery Dot Com, Paris Florist,

Pulaski Florist & Gifts Delivery.com, Ripley Florist & Gifts Delivery.com, Sandy Springs Florist Delivery, Savannah Florist & Gifts Delivery.com, Sevierville Florist & Gifts.com, Shelbyville Florist & Gifts.com, Smyrna Florist and Delivery, Springfield Florist and Gifts Delivery.com, Springhill Florist & Gifts Delivery.com, Union City Florists and Gifts Delivery, and Whitehouse Florist & Gifts Delivery.

JURISDICTION AND VENUE

3. This Court exercises jurisdiction pursuant to Tenn. Code Ann. § 20-2-201, Tenn. Code Ann. § 20-2-214, Tenn. Code Ann. § 47-18-108 and Tenn. Code Ann. § 47-18-114. As the Complaint will show, the Defendant poses as local businesses by advertising in local yellow page listings in Tennessee and in Williamson County, taking orders and receiving payment from Tennesseans, including Williamson County residents, and delivering flowers, through their agents, to Williamson County residents and other Tennesseans. The Defendant, through these transactions, is doing business in Tennessee and is subject to jurisdiction through the State's long-arm statute, Tenn. Code Ann. § 20-2-201 *et seq.*, specifically Tenn. Code Ann. § 20-2-214(a)(1), (2), and (6). Pursuant to Tenn. Code Ann. § 20-2-214 (c), a foreign corporation may be subject to jurisdiction based on the actions of an agent.

4. Venue is proper in Williamson County pursuant to Tenn. Code Ann. § 47-18-108(a)(3) because it is a county where the unfair and deceptive acts and practices alleged in this Complaint have taken place, or are about to take place.

FACTUAL ALLEGATIONS

Upon information and belief the State of Tennessee alleges as follows:

5. The Defendant is a foreign corporation who does not perform tasks generally associated with florists in Tennessee such as creating and designing floral arrangements or even

keeping flowers in inventory or on hand.

6. Instead, since December 1, 2005, the Defendant has operated and operates a centralized call and routing telemarketing center and acts as floral order broker or “order gatherers” by collecting orders for floral arrangements to be created and arranged by real florists.

7. Defendant employs 3 employees who answer the telephones and take floral orders. “Floral orders” or “floral order” as used in this Complaint shall refer to a consumer’s order for flowers, plants, gifts or other goods or services offered by the Defendant.

8. Through wire services such as Teleflora and FTD, the Defendant forwards floral orders gathered in Pennsylvania for other florists to fulfill. If the order is to be delivered in Tennessee, the order gatherer eventually forwards the order to a Tennessee florist who is a member of the same wire service network.

9. In some cases, Defendant routes the consumer’s floral order through several entities. Each time the consumer loses a portion of the value of their original floral order.

10. In other cases, the Defendant reduces the value of the consumer’s floral order by undisclosed delivery fees and transfer fees prior to passing it on to a florist to fulfill.

11. In other cases, the Defendant fails to fulfill the consumer’s request for a particular kind of flower or floral arrangement and substitutes different flowers or floral arrangements without the consumer’s consent.

12. The Defendant receives a significant percent of the total purchase price for each floral order by a Tennessee consumer.

13. The Defendant attracts customers through their advertisements by posing as local florists in yellow page and other commercial phone listings.

14. Defendant advertised in “The Phone Book” Williamson County 2006 edition of

Willow Advertising and Publishing 2006, as follows in the business section under “Florists”:

Franklin Florist In Franklin.com 595-5584

15. Further, Defendant advertised in “The Phone Book” Williamson County 2006 edition of Willow Advertising and Publishing 2006 advertised in the Franklin alphabetical listings as: **Franklin Florist In Franklin.com 595-5584**

16. Defendant advertised in the current “The Real Yellow Pages” edition, as follows in the alphabetic section under the “Franklin-Brentwood” section as follows:

Franklin Florist Delivery.com 595-5584

Franklin Florist In Franklin.com 595-5584

17. Further, Defendant separately advertised in the current “The Real Yellow Pages” edition , business section under “Florists” as follows:

Brentwood Florist Of Brntwd 373-6811

Franklin Florist IN Franklin.com Frnkln 595-5584

18. In response to the advertisements described in this Complaint and published in BellSouth Yellow and White Pages from December 1, 2005 to September 19, 2006, consumers in numbers unknown to the State telephoned Defendant’s local telephone numbers.

19. Many of these consumers believed and even stated to Defendant that they thought they had reached their local florist such as but not limited to Franklin Flower & Gift Gallery located at 1152 Columbia Avenue, Franklin, Tennessee 37064 or Brentwood Flower Shoppe located at 119 Franklin Road, Brentwood, Tennessee 37027.

20. Defendant did not correct and took advantage of the consumer’s understanding that it had reached a florist in the consumer’s local area.

21. Many consumers have complained to Franklin Flower & Gift Gallery regarding

the quality, type, quality and value of the floral orders it believed were placed thru the Franklin Flower and Gift Gallery on Columbia Avenue in Franklin, Tennessee.

22. In fact, some orders were placed through Defendants and routed through several other florists prior to being filled.

23. Following a similar deceptive scheme across the State of Tennessee, Defendant has has conducted business and placed advertisements in commerical telephone directories under the names: Alcoa Florist Delivery.com, Brentwood Florist of Brentwood.com, Brentwood Flowers of Brentwood.com, Bristol Florist, Clarksville Florist and Gifts DeliveryDotCom,Clarksville Florist Delivery.com, Clarksville Florist in Clarksville, Cleveland Florist of Cleveland.com, Cleveland Flowers of Cleveland.com, Clifton Florist and Gifts and Delivery.com, College Dale Florist and Gift Delivery, Collierville Flowers and Gifts Com, Columbia Florist Delivery.com, Columbia Florist in Columbia.com, Columbia Florist of Columbia.com, Columbia Flowers of Columbia.com, Dayton Florist & Gifts Delivery.com, Dickson Florist and Gift Delivery Dot Com, Dyersburg Florist and Gifts Delivery.com, Fayetteville Florist and Gifts Delivery.com, Florist Network, Franklin Florist Delivery.com, Franklin Florist in Franklin.com, Germantown Florist Delivery.com, Germantown Florist in Germantown.com, Germantown Florist of Germantown.com, Germantown Flowers of Germantown.com, Jackson Florist & Gifts Delivery Com, Jefferson City Florist & Gifts Delivery Dot Com, Knoxville Florist Delivery.com, Knoxville Florist in Knoxville.com, Lenior City Florist & Gifts Delivery.com, Lewisburg Florist & Gifts Delivery.com, Lexington Florist & Gifts Delivery.com, Maryville Florist & Gifts Delivery.com, Memphis Florist & Gifts Delivery.com, Milan Florist & Gifts Delivery.com, Morristown Florist & Gifts Delivery, Murfreesboro Florist Delivery.com, Murfreesboro Florist in Murfreesboro.com, Murfreesboro

Florist of Murfreesboro.com, Murfreesboro Flowers of Murfreesboro.com, Nashville Florist and Gifts Delivery.com, Nashville Florist Delivery.com, Nashville Florist in Nashville.com, Oak Ridge Florist and Gift Delivery Dot Com, Paris Florist, Pulaski Florist & Gifts Delivery.com, Ripley Florist & Gifts Delivery.com, Sandy Springs Florist Delivery, Savannah Florist & Gifts Delivery.com, Sevierville Florist & Gifts.com, Shelbyville Florist & Gifts.com, Smyrna Florist and Delivery, Springfield Florist and Gifts Delivery.com, Springhill Florist & Gifts Delivery.com, Union City Florists and Gifts Delivery, and Whitehouse Florist & Gifts Delivery.

24. The Defendant does not have offices in Alcoa, Brentwood, Bristol, Clarksville, Cleveland, Clifton, College Dale, Collierville, Columbia, Dayton, Dickson, Dyersburg, Fayetteville, Franklin, Germantown, Jackson, Jefferson, Knoxville, Lenior City, Lewisburg, Lexington, Maryville, Memphis, Milan, Morristown, Murfreesboro, Nashville, Oak Ridge, Paris, Pulaski, Ripley, Sandy Springs, Savannah, Sevierville, Shelbyville, Smyrna, Springfield, Spring Hill, Union City, and Whitehouse or any other location in Tennessee.

25. From December, 2005 to September 19, 2006, the Defendant has used the following local phone numbers in its advertisements to Tennessee consumers:

615-220-2852	931-270-8400	901-748-1200	865-215-9915	731-285-5122	423-472-5368
615-285-0504	931-363-0760	901-754-4214	865-429-5600	731-427-7633	423-570-8881
615-298-7779	931-381-2877	901-758-5044	865-463-1000	731-635-1191	423-587-6455
615-371-9933	931-388-8828	901-767-0144	865-471-0054	731-641-0003	423-599-5980
615-373-6811	931-433-2080	901-861-0170	865-483-4050	731-885-0206	423-875-2817
615-446-3060	931-461-9923		865-977-6969	731-926-1333	
615-595-5584	931-486-0704		865-982-3125	731-967-0607	
615-742-3337	931-647-2010		865-986-8226		
615-742-3337	931-648-1855				

615-220-2852	931-270-8400	901-748-1200	865-215-9915	731-285-5122	423-472-5368
615-890-0484	931-648-9408				

26. Between December 1, 2005 and September 19, 2006, four hundred and thirteen (413) Tennessee consumers or consumers shipping floral arrangements into Tennessee have called one of Defendant's local telephone numbers and placed an order.

27. Consumers have been disappointed to learn that the floral orders were not placed with the local florist they believed they placed the order but rather the Defendant.

28. Consumers have been dissatisfied with the quality, types, and nature of floral orders provided by Defendant.

29. Defendant has failed to deliver floral orders following the specifications of the consumer placing the order.

30. As a result of Defendant's conduct described herein, consumers have suffered ascertainable losses associated with the various unfair, deceptive and misleading acts and practices described in this Complaint.

31. The allegations in this Complaint are limited to the time period December 1, 2005 to September 19, 2006 and the doing business names listed in paragraph 2 and advertisements in BellSouth publications distributed in Tennessee.

VIOLATIONS OF THE LAW

32. Plaintiff hereby incorporates by reference and re-alleges each and every allegation contained in paragraphs 1 through 31, herein.

33. Defendants conduct of the offering of floral orders to consumers for sale as alleged herein, constitutes the offering of or providing of "goods" and/or "services" and

constitutes “trade,” “commerce” and/or a “consumer transaction” as defined in Tenn. Code Ann. §§ 47-18-103 (5), (10) and (11). Each breach of the Act constitutes a separate violation per Tenn. Code Ann. § 47-18-108(b)(3).

COUNT ONE

(Violations of the Tennessee Consumer Protection Act of 1977)

34. By engaging in the aforesaid conduct, Defendant has violated the Tennessee Consumer Protection Act by committing acts and practices that are unfair or deceptive, in violation of Tenn. Code Ann. § 47-18-104(a).

COUNT TWO

(Violations of the Tennessee Consumer Protection Act of 1977)

35. By engaging in the aforesaid conduct, Defendant has violated the Tennessee Consumer Protection Act by committing acts and practices that are *per se* deceptive, in violation of Tenn. Code Ann. § 47-18-104(b).

36. By falsely passing off their floral order service as goods or services of another, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(1) and (b)(27).

37. By causing likelihood of confusion or misunderstanding as to the source of the floral orders, goods or services i.e. whether the floral order is being placed with a local Tennessee florist, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a) and (b)(2).

38. By causing likelihood of confusion or misunderstanding as to the affiliation, connection or association it has with local Tennessee florist, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(3) and (b)(27).

39. By using deceptive representations or designations of geographic origin including the various dbas listed in the caption of this case in connection with floral orders, goods or services, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(4) and (b)(27).

40. By representing that floral orders, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that the person has a sponsorship approval, status, affiliation or connection that such person does not have, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(5) and (b)(27).

41. By representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(12) and (b)(27).

42. By using statements or illustrations in any advertisement which create a false impression of the grade, quantity, make, value, age, size, color, usability or origin of floral orders, goods or services offered, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

43. By misrepresenting the Defendant's geographic location by listing fictitious names or assumed business names in a local telephone book, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(27) and (b)(32).

44. By charging or reducing the value or amount of the floral order delivered without clearly and conspicuously disclosing the charge or reduction in value to the

consumer prior to purchase, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a) and (b)(27).

45. By misrepresenting Defendant's geographic location in the local telephone directory, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(27) and (b)(32)(A).

46. By failing to identify the locality and state of the Defendant's business in the local telephone directory, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(27) and (b)(32)(B).

47. By routinely forwarding calls from Defendant's local telephone number to the Defendant's business location outside the calling area covered by the local telephone directory, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(27) and (b)(32)(C).

48. Because Defendant's business is not located in a county that is contiguous to a county in the calling area covered by the local telephone directory where it advertises its florist assumed names, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(27) and (b)(32)(D).

49. Because Defendant does not have a business location or branch, or an affiliate, subsidiary, or agent of the Defendant in the local calling area or county contiguous to the local calling area, where Defendant advertised its local florist assumed names, Defendant has violated Tenn. Code Ann. §§ 47-18-104(a), (b)(27) and (b)(32)(E).

DEMAND FOR RELIEF

WHEREFORE, Plaintiff State of Tennessee, *ex rel.* Paul G. Summers, Attorney General, pursuant to the TCPA, the Attorney General's general statutory authority, the Attorney General's authority at common law and this Court's equitable powers, prays:

1. That this Complaint be filed without cost bond as provided by Tenn. Code Ann. § 47-18-116;
2. That process issue and be served upon Defendant, requiring it to appear and answer this Complaint;
3. That this Court adjudge and decree that the Defendant has engaged in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977;
4. That this Court permanently enjoin Defendant from engaging in the aforementioned acts or practices which violate the Tennessee Consumer Protection Act of 1977 and that such orders and injunctions be issued without bond pursuant to Tenn. Code Ann. § 47-18-108(4);
5. That this Court make such orders or render such judgments as may be necessary to restore to any consumer or other person any ascertainable losses, including statutory interest suffered by reason of the alleged violations of the Tennessee Consumer Protection Act of 1977, and requiring that Defendants be taxed with the cost of distributing and administering the same, pursuant to Tenn. Code Ann. § 47-18-108(b)(1);
6. That this Court make such orders or render such judgments as may be necessary to disgorge the profits and ill-gotten gains Defendant realized by reason of the

alleged violations of the Tennessee Consumer Protection Act of 1977;

7. That this Court enter judgment against Defendant and in favor of the State for the reasonable costs and expenses of the investigation and prosecution of the defendants' actions, including attorneys' fees, expert and other witness fees, as provided by Tenn. Code Ann. § 47-18-108(a)(5) and (b)(4);

8. That this Court adjudge and decree that the Defendant pay civil penalties of not more than one thousand dollars (\$1,000.00) per violation to the State as provided by Tenn. Code Ann. § 47-18-108(b)(3);

9. That all costs in this case be taxed against Defendant; and

10. That this Court grant Plaintiff such other and further relief as this Court deems just and proper.

Respectfully submitted,

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APPROVED AND RECOMMENDED BY:

Mary Clement
Director of the Division of Consumer Affairs

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